

480186

9143-1

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:) Case No. 09-B-29024
)
ARENA FOOTBALL LEAGUE, LLC,) Chapter 11
)
Debtor.) Hon. Susan Pierson Sonderby

NOTICE OF MOTION

To: See Attached Service List

PLEASE TAKE NOTICE that on **Wednesday, January 13, 2009** at **10:00 a.m.**, or as soon thereafter as counsel may be heard, I shall appear before the Honorable Susan Pierson Sonderby, United States Bankruptcy Judge, in Courtroom 642 of the Everett McKinley Dirksen Federal Courthouse, 219 South Dearborn Street, Chicago, Illinois or before any other Bankruptcy Judge sitting in her place, for purposes of presenting the following Motion, a copy of which is attached hereto and served upon you:

**MOTION OF CHAPTER 11 TRUSTEE TO SET BAR DATE FOR "GAP CLAIMS"
AND ADMINISTRATIVE CLAIMS, EXCLUSIVE OF PROFESSIONAL FEES**

ALEX D. MOGLIA, solely as chapter 11 Trustee,

/s/ Si-Yong Yi

John Collen
Si-Yong Yi
Tressler LLP
233 S. Wacker Drive, 22nd Floor
Chicago, Illinois 60606
Tel: (312) 627-4000 / Fax: (312) 627-1717
E-mail: jcollen@tresslerllp.com; syi@tresslerllp.com
Counsel For The Trustee

CERTIFICATE OF SERVICE

I, Si-Yong Yi, an attorney, state that on January 11, 2010 pursuant to Local Rule 9013-3(D), that I caused the above-referenced **MOTION OF CHAPTER 11 TRUSTEE TO SET BAR DATE FOR "GAP CLAIMS" AND ADMINISTRATIVE CLAIMS, EXCLUSIVE OF PROFESSIONAL FEES** to be filed and served on all parties identified as Registrants on the service list below through the Court's Electronic Notice for Registrants and, as to all other parties on the service list below, via electronic mail, facsimile or First Class U.S. Mail to the address(es) as indicated on the attached service list.

/s/ Si-Yong Yi

474575

SERVICE LIST

In re: Arena Football League, LLC, Case No. 09-B-29024

Registrants in the Case:
(Service Through ECF)

<u>Counsel For Trustee</u> John Collen Si-Yong Yi Tressler LLP 233 S. Wacker Drive, 22nd Floor Chicago, Illinois 60606 Tel: (312) 627-4193 Fax: (312) 627-1717 E-mail: jcollen@tresslerllp.com syi@tresslerllp.com	
<u>Counsel For Arena Football League, LLC</u> William J. Factor The Law Office of William J. Factor, Ltd. 1363 Shermer Road, Suite 224 Northbrook, IL 60062 Tel: (847) 239-7248 Fax: (847) 574-8233 E-mail: wfactor@wfactorlaw.com Sara E. Lorber The Law Office of William J. Factor, Ltd. 105 W. Madison, Suite 400 Chicago, IL 60602 Tel: (312) 502-5807 Fax: (312) 502-5807 E-mail: slorber@wfactorlaw.com Jessica Tovrov Tovrov Law Offices 105 West Madison Street Suite 400 Chicago, IL 60602 Tel: (312) 252-7362 Fax: (312) 264-2535 E-mail: jessica@tovrovlaw.com	<u>Counsel For Fifth Third Bank</u> J. Mark Fisher Jason M. Torf Schiff Hardin & Waite 233 S. Wacker Dr., Suite 6600 Chicago, IL 60606 Tel: (312) 258-5500 Fax: (312) 258-5700 E-mail: mfisher@schiffhardin.com jtorf@schiffhardin.com

<p><u>Counsel For Steve Woltmann</u> Frank J. Kokoszka Kokoszka & Janczur, P.C. 140 S Dearborn #1610 Chicago, IL 60603 Tel: (312) 443-9600 Fax: (312) 443-5704 E-mail: fkokoszka@k-jlaw.com</p>	<p><u>Counsel For Gridiron Enterprises, Inc., Johnson & Bell, Ltd., Sheraton New Orleans Hotel and Members of The Unsecured Creditors Committee</u> Richard S. Lauter Freeborn & Peters LLP 311 S. Wacker Drive, Suite 3000 Chicago, IL 60606 Tel: (312) 360-6641 Fax: (312) 360-6570 E-mail: rlauter@freebornpeters.com</p>
<p><u>Counsel For PR II Presidents Plaza JV, LLC</u> Patrick C. Maxcy Stephanie L. Wowchuk Sonnenschein, Nath & Rosenthal 8000 Sears Tower Chicago, IL 60606 Tel: (312) 876-2810 Fax: (312) 876-7934 E-mail: pmaxcy@sonnenschein.com</p>	<p><u>Counsel For Gridiron Enterprises, Inc.</u> Pia N. Thompson Kovitz Shifrin Nesbit 750 W. Lake Cook Rd., Suite 350 Buffalo Grove, IL 60089 Tel: (847) 777-7258 Fax: (847) 537-0550 E-mail: pthompson@ksnlaw.com</p>
<p><u>Counsel For DP Fox Football Holdings, LLC d/b/a Grand Rapids Rampage and Acquisition Holdings, LLC</u> Peter A. Clark Jennifer A. Kimball Barnes & Thornburg LLP One North Wacker Drive, Suite 4400 Chicago, IL 60606 Tel: (312) 357-1313 Fax: (312) 759-5646 Email: pclark@btlaw.com jkimball@btlaw.com</p>	<p><u>Counsel For Proskauer Rose LLP</u> Grayson T. Walter Proskauer Rose LLP Three First National Plaza 70 West Madison – Suite 3800 Chicago, IL 60602 Tel: (312) 926-3550 Fax: (312) 962-3551 Email: gwalter@proskauer.com</p>
	<p><u>Counsel For United States Trustee</u> Stephen G. Wolfe Office of the U.S. Trustee 219 S. Dearborn, Room 873 Chicago, IL 60604 Tel: (312) 886-7480 E-mail: USTPRegion11.ES.ECF@usdoj.gov</p>

Members of the Committee

(Service by U.S. Mail or by fax if fax number is indicated)

NBC Universal Attn: Daniel M. Kummer 30 Rockefeller Plaza, Rm. 1091E New York, NY 10112	The Phoenix Communications Group, Inc. Attn: John M. Podesta 3 Empire Blvd. South Hackensack, NJ 07606
David Baker 468 N. Equestrian Drive Orange, CA 92869	San Jose SaberCats Attn: Alex Curotto 600 East Brokaw Road San Jose, CA 95112
American Express Travel Related Servs. Co., Inc. Corp. Card Attn: Becket and Lee LLP P.O. Box 3001 Malvern, PA 19355-0701	ESPN Attn: Leah LaPlaca 545 Middle Street Bristol, CT 06010
AECOM Attn: Rebecca Griffin 7870 Villa Park Drive Richmond, VA 23228	Philadelphia Soul Attn: Craig Spencer 7 Penn Center-17th Floor 1635 Market Street Philadelphia, PA 19103
af2 Attn: Jerry Kurz 200 S. Michigan Avenue, #1200 Chicago, IL 60606	Champs Sports Attn: Scott Gurka 311 Manatee Avenue W Bradenton, FL 34205
Team Marketing Attn: Scott Gurka 2101 Corporate Blvd., #317 Boca Raton, FL 33431	Chicago Rush Attn: Alan Levin 1011 E. Touhy # 400 Des Plaines, IL 60018-5805
Proskauer Rose LLP Attn: Joe Leccese 1585 Broadway New York, NY 10036-8299	Cleveland Gladiators Attn: Jim Ferraro 631 Huron Road Cleveland, OH 44115-1116

Georgia Force Attn: Rob Geoofroy 4400 Falcon Parkway Flowery Branch, GA 30542	Colorado Crush Attn: Jerry Girkin 1000 Chopper Circle Denver, CO 80204
New York AFL LP f/k/a New York Dragons Attn: Jaimie Wolf 1600 Old Country Rd. Plainview NY 11803-5042 Fax: (516) 622-7510	BlueCross Blueshield of Illinois Attn: Kenneth Kolanowski 300 East Randolph Street Chicago, IL 60601-5099
Daniel L. Hubbel Regional Director National Labor Relations Board Seventeenth Region 8600 Farley Street - Suite 100 Overland Park, Kansas 66212-4677 Fax: (913) 967-3010	Michael Werner National Labor Relations Board 224 S. Bouylder Ave., Suite 318 Tulsa, OK 74103 Fax: (918) 581-7970
Jeanette C Schrand National Labor Relations Board 209 S. LaSalle St. - Suite 900 Chicago, IL 60604 Tel: (312)353-7614 Email: jeanette.schrand@gmail.com	Paul Engelberts President Arena Football Officials Assoc. 3124 Ferris Avenue Royal Oak, MI 48073 Fax: (248) 588-0105
Arena Football League Players' Assoc. Todd Flanagan 1133 20th St NW, Suite 700 Washington DC 20036 Tel: (202) 756-9130	

Additional Parties

(Service by Electronic Mail)

Laura Bandini National Labor Relations Board Special Litigation Branch 1099 14th St. NW Washington, DC 20570 Tel: (202) 273-3784 / Fax: (202) 273-1799 E-mail: Laura.Bandini@nlrb.gov	Michael C. Arnold, Esq. Attorney for AFOA 1125 Grand Boulevard Suite 1600 Kansas City, MO 64106 Tel: (816) 421-5788 Fax: (816) 471-5574 E-mail: mcarnold@anwjj.com
---	---

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:)	
)	Chapter 11
)	
ARENA FOOTBALL LEAGUE, LLC,)	Case No. 09-B-29024
)	
)	Honorable Susan Pierson Sonderby
DEBTOR.)	

**MOTION OF CHAPTER 11 TRUSTEE TO SET BAR DATE FOR “GAP CLAIMS”
AND ADMINISTRATIVE CLAIMS, EXCLUSIVE OF PROFESSIONAL FEES**

Alex D. Moglia, not individually, but solely in his capacity as chapter 11 trustee (the “Trustee”) of the bankruptcy estate of Arena Football League, LLC (“AFL”) respectfully submits this motion for an order setting a bar date for the filing and assertion of “gap claims” and of administrative claims, exclusive of professional fees. In support hereof, the Trustee respectfully states as follows.

**I.
JURISDICTION AND VENUE**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A) and (O). Venue of this matter and this Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

**II.
BACKGROUND**

2. On August 7, 2009 (“Petition Date”), an involuntary petition was filed in this Court against the Debtor under chapter 7 of title 11 of the United States Code, 11 U.S.C. § 101, *et seq.* (“Bankruptcy Code”). On August 26, 2009, the Debtor consented to the entry of the order for relief under Chapter 11 of the Bankruptcy Code.

3. On October 20, 2009, an order was entered by this Court approving the appointment of Alex Moglia as the Trustee.

4. On November 25, 2009, pursuant to the Bidding Procedures approved by the Court on October 21, 2009 (“Bidding Procedures”), an auction took place for the sale of substantially all assets of the AFL. At the auction, the highest and best bid was made by Arena Football One, LLC (“Arena One”) in the amount of \$6,100,000. On December 7, 2009 this Court entered an order authorizing the sale to Arena One of the assets that were the subject of the auction.

5. On December 18, 2009, the closing for the sale of substantially all assets of AFL to Arena One was completed. The principal assets retained by this estate are causes of action under Chapter 5 of the Bankruptcy Code and cash from carve outs by Fifth Third Bank from its collateral. AFL’s principal remaining obligations are the administration of AFL 401(k) plan, investigation, and if warranted, prosecution of the Chapter 5 causes of action, and distribution of cash.

III.
TRUSTEE’S REQUEST FOR BAR DATE FOR “GAP CLAIMS” AND
ADMINISTRATIVE CLAIMS FOR CLAIMANTS OTHER THAN PROFESSIONALS

6. Section 507(a)(3) of the Bankruptcy Code affords as a third priority to unsecured claims allowed under § 502(f) of the Bankruptcy Code. Section 502(f) governs “gap claims.” In an involuntary case, gap claims arise in the ordinary course of the debtor’s business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee and the order for relief. Accordingly, in this case, the “gap claims” would be such claims arising from August 7, 2009, the date of the involuntary Chapter 7 petition, to August 25, 2009, the day before the Court entered an order for relief under Chapter 11, pursuant to the Debtor’s consent.

The “gap period” is therefore August 7, 2009 to August 25, 2009. The Chapter 11 administrative expense period commenced on August 26, 2009.

7. The Trustee is not aware of any gap claims arising under § 502(f) of the Bankruptcy Code because during the gap period the Debtor was not conducting ordinary course of business or financial affairs. Nonetheless, in abundance of caution, the Trustee is including a proposed bar date for gap claims as a part of this Motion.

8. Section 507(a)(2) of the Bankruptcy Code affords second priority to the administrative expenses allowed under section 503(b) of the Bankruptcy Code, which section in turn refers to “actual, necessary costs and expenses” of preserving the estate.

9. The Trustee is unaware of any administrative expenses beyond professional fees other than very minor storage and transportation expenses.

10. The professional fees related to this case include payments to the following professionals who have been retained by the order of this Court: (a) Popowcer Katten, Ltd. (accounting fees and tax preparation); (b) Freeborn & Peters LLP (Committee Counsel); (c) Tressler LLP (counsel for Bankruptcy Trustee); (d) Law Offices of William Factor (Debtor’s counsel); (e) Moglia Advisors (accounting services); (f) Alex D. Moglia (the Bankruptcy Trustee); and (g) The U.S. Trustee. Fifth Third Bank carved out up to \$655,500 for the payment of fees to the above professionals to the foregoing subject to allowance by this Court. Fees of such professionals will be sought by applications in the future under § 330 of the Bankruptcy Code.

11. No final decision has been made, but the Trustee anticipates that he will either convert this case to Chapter 7 case or dismiss this case. Prior to the conversion or dismissal of

this case, the Trustee desires to pay Chapter 11 professionals from the carve-outs provided by Fifth Third Bank, the Lender.

12. The United States Trustee has asserted, and the Chapter 11 Trustee disputes, that all professional fees must be paid under § 506(c) of the Bankruptcy Code. The issue is moot if there are sufficiently few or no competing Chapter 11 administrative expenses.

13. Further, the asserted amount of gap claims and administrative expenses will be a factor, but not necessarily determinative, in whether this case should be dismissed or converted.

14. Accordingly, the Trustee requests a bar date for gap claims and for administrative claims, except professionals whose compensation is subject to approval of this Court. The Trustee recommends a bar date of 30 days after presentation of this Motion, with notice to be given in the form attached as Exhibit 1, to parties having known post-petition dealings with this estate and such other parties as may be determined at the hearing.

15. The proposed form and manner of notice comports with Bankruptcy Code § 102, and constitutional principles of due process set forth in *Mullane v Central Hanover Trust Co.*, 339 U.S. 306 (1950) and its progeny.

IV. **NO PRIOR APPLICATION**

16. No prior application for the relief requested herein has been made by the Trustee to this or any other court.

V. **NOTICE**

17. Notice of the hearing on this Motion has been provided to (a) the Office of the United States Trustee; (b) counsel to the Official Committee of Unsecured Creditors; (c) the Debtors' twenty largest unsecured creditors; and (d) any and all parties that have appeared in the

cases or otherwise requested notice of pleadings. The Trustee submits that under the circumstances no further notice of this Motion is necessary.

VI.
RELIEF REQUESTED

WHEREFORE, the Trustee respectfully requests that this Court enter an order approving of the bar date for gap claims and for administrative claims for claimants other than professionals, approval of the form and manner of notice, together with such other and further relief as the Court deems just.

Dated: January 11, 2010

Respectfully submitted,

ALEX D. MOGLIA, solely as chapter 11 Trustee,

/s/ Si-Yong Yi

John Collen
Si-Yong Yi
Tressler LLP
233 S. Wacker Drive, 22nd Floor
Chicago, Illinois 60606
Tel: (312) 627-4000
Fax: (312) 627-1717
E-mail: jcollen@tresslerllp.com
syi@tresslerllp.com
Counsel for the Trustee

CERTIFICATE OF SERVICE

I, Si-Yong Yi, an attorney, state that on January 11, 2010 pursuant to Local Rule 9013-3(D), that I caused the above-referenced **MOTION OF CHAPTER 11 TRUSTEE TO SET BAR DATE FOR ADMINISTRATIVE CLAIMS and "GAP CLAIMS," EXCLUSIVE OF PROFESSIONAL FEES** to be filed and served on all parties identified as Registrants on the service list below through the Court's Electronic Notice for Registrants and, as to all other parties on the service list below, via electronic mail, facsimile or First Class U.S. Mail to the address(es) as indicated on the attached service list.

/s/ Si-Yong Yi